IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

WP(C).No. 24533 of 2007()

PETITIONERS:

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1. SHERLY GEORGE,UPPER DIVISION CLERK,
   PRINCIPAL AGRICULTURAL OFFICE,THODUPUZHA.

2. F.A.SHYLA,U.D CLERK,
   DIRECTORATE OF AGRICULTURE,
   VIKAS BHAVAN,THIRUVANANTHAPURAM.

BY ADV. SRI.KKM.SHERIF
SRI.P.M.KUNJIMOIDEENKUTTY
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.SHEENA SAMUEL

RESPONDENTS:

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1. THE SECRETARY TO GOVERNMENT,
   AGRICULTURAL DEPARTMENT,
   SECRETARIAT,THIRUVANANTHAPURAM.

2. THE DIRECTOR OF AGRICULTURAL
   VIKAS BHAVAN,THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXHIBIT-P1: TRUE COPY OF THE ORDER NO. O & M (II) 102491/87 DATED 14.7.1988

EXHIBIT-P2: TRUE COPY OF THE PROVISIONAL SENIORITY LIST OF LD CLERKS AS ON 01.4.85 PUBLISHED ALONG WITH THE CIRCULAR NO.S.12-55418/85 DATED 26.4.21986

EXHIBIT-P3: TRUE COPY OF THE REPRESENTATION DATED 27.10.87

EXHIBIT-P4: TRUE COPY OF THE ORDER NO. SA (1)83141/97 DATED 03.04.98

EXHIBIT-P5: TRUE COPY OF THE ORDER NO. SA(1) 32106/95 (2) DATED 23.9.2000

EXHIBIT-P6: TRUE COPY OF THE REPRESENTATION DATED 13.11.2000

EXHIBIT-P7: TRUE COPY OF THE ORDER NO. S.A (1) 65839/2000 DATED 09.01.2001

EXHIBIT-P7 (a):TRUE COPY OF THE ORDER NO.SA (3) 63746/2000 DATED 09.01.2001

EXHIBIT-P8: TRUE COPY OF THE PETITION DATED 12.02.01

EXHIBIT-P9: TRUE COPY OF THE REPRESENTATION DT. 12.10.01

EXHIBIT-P10: TRUE COPY OF THE MEMO DATED 28.12.2001

EXHIBIT-P11: TRUE COPY OF THE ORDER NO.9985/EA3/01/AD DT.11.01.02

EXHIBIT-P12: TRUE COPY OF THE ORDER NO.2179/EA3/02/AD. DT. 6.01.03

EXHIBIT-P13: TRUE COPY OF THE ORDER DATED 27.01.03 IN CMP NO.5065/03

EXHIBIT-P14: TRUE COPY OF THE JUDGMENT DATED 11.12.2006 IN O.P NO.2865/03

EXHIBIT-P15: TRUE COPY OF THE REPRESENTATION DATED 6.6.07

EXHIBIT-P16: TRUE COPY OF THE G.O (Rt) NO.964/07/AD DATED 7.6.07

EXHIBIT-P17: TRUE COPY OF THE ORDER NO. E (2) 111990/87/L.DIS DT.29.3.88

EXHIBIT-P18: TRUE COPY OF THE ORDER NO. O & M (5) 102491/87 DT. 17.5.89

EXHIBIT-P19: TRUE COPY OF THE ORDER NO. SA2-93524/86 DT. 7.11.86

EXHIBIT-P19(a):TRUE COPY OF THE ORDER NO.SA2-93524/86 DT. 7.11.86

EXHIBIT -P19(b): TRUE COPY OF THE ORDER NO.SA2-17240/87 DT. 3.4.87

EXHIBIT-P19 (d): TRUE COPY OF THE ORDER NO.SA2-76647/87 DT. 27.9.87

EXHIBIT-P19 (e): TRUE COPY OF THE ORDER NO.SA2-1145/87 DT. 14.5.87

EXHIBIT -P20: TRUE COPY OF THE ORDER NO.SA1-32106/95 DT. 18.12.95

/TRUE COPY/

ANTONY DOMINIC, J.

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W.P.(C) No. 24533 OF 2007 U
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Dated this the 24th August, 2007

J U D G M E N T

This writ petition is filed seeking to quash Ext. P16 and to declare that the 1st petitioner is entitled for promotion with effect from 13-2-1986 and the 2nd petitioner, on 11-6-1986. Petitioners also seek a direction to the respondents to grant all consequential benefits.

2. The 1st petitioner entered service as a Lower Division Clerk on 3-9-1984 and on passing departmental tests in 1986, her probation was declared on 10-2-1987. The 2nd petitioner also commenced service as a Lower Division Clerk on 28-11-1984 and on passing departmental test in February 1986, her probation was declared with effect from 25-2-1987. On 13-2-1986 though the 1st petitioner was promoted as Upper Division Clerk, she was reverted by Ext. P1 order dated 14-7-1988 and was later promoted with effect from 27-2-1997.

3. In so far as the 2nd petitioner is concerned,

she was not included in Ext. P2 seniority list and hence was not considered for promotion. However, by Ext. P4 order dated 3-4-1988 she was promoted as an Upper Division Clerk with effect from 1-4-1987. Ext. P5 is an order cancelling Ext. P4 order of promotion of the 2nd petitioner based on a complaint made by the 1st petitioner and another employee called Geetha and by this order the 2nd petitioner's promotion was made effective from 4-5-1998. Her request for review of the order was rejected by Ext. P7 and her pay was also fixed accordingly. Thereafter Ext. P10 memo was issued proposing to recover Rs.67,995/- drawn by the 2nd petitioner excessively. She had also filed an appeal against Ext. P7 order. That was rejected by Ext. P11 and her representation against Ext. P10 memo proposing recovery, was also rejected by Ext. P12. At that stage, the 2nd petitioner filed O.P. No. 2865 of 2003 challenging Exts. P11 and P12 and the case was disposed of by Ext. P14 judgment directing reconsideration of the matter. She again represented by Ext. P15 and on its rejection by Ext. P16 which included an order for recovery of Rs.67,995/-, this writ petition has been

filed by both the petitioners, seeking the reliefs mentioned earlier.

4. In so far as the 1st petitioner is concerned, she seeks a declaration that she is entitled for promotion with effect from 13-2-1986. From the facts narrated earlier, it is evident that the 1st petitioner was promoted initially to the category of Upper Division Clerk with effect from 13-2-1986. Thereafter by Ext. P1 order dated 14-7-1988 she was reverted as a Lower Division Clerk and thereafter her promotion was made effective from 27-2-1997. Facts also show that the cancellation of Ext. P4 order of promotion of the 2nd petitioner as per Ext. P5 was made on the basis of a complaint made by the 1st petitioner and another employee. After Ext. P1 order, she did not make any complaint or take any action against her reversion or the order promoting her with effect from 27-2-1997. It is only after almost two decades that she is making this claim for the first time. If this claim is to be allowed now that will be unsettling the settled position of various employees and that is not permissible. Apart from the delay that is involved,

the persons who are likely to be affected by such pre-poning of her promotion, are also not made parties to this writ petition. Primarily for the delay and laches in challenging Ext. P1 and the order making her promotion effective from 27-2-1997, she is not entitled to any relief.

5. In so far as the 2nd petitioner is concerned though by Ext. P4 she was promoted as Upper Division Clerk with effect from 1-4-1987, based on a complaint made by the 1st petitioner and another person, Ext. P4 was cancelled by Ext. P5 and the promotion of the 2nd petitioner was made effective from 4-5-1998. It is this order that ultimately led to Ext. P16 which is challenged in this writ petition. She is claiming that she should be promoted in the vacancy on 11-6-1986. While examining her claim for such promotion it is to be noted that the probation of the 2nd petitioner was declared only on 25-2-1987. For the period upto 24-2-1987 the 2nd petitioner was only a probationer and none of her juniors superseded her as Upper Division Clerk.

6. She is also not eligible to get promotion during June, 1986 to August 1986 in the unfilled

vacancies since none of her juniors were qualified for promotion till the date of declaration of her probation. Therefore the provisions of Rule 28A(1) does not come to her assistance. It is also seen that between 25-2-1987, when her probation was declared and 4-5-1998 the date from which she was actually promoted as per Ext. P5, only her seniors were qualified and were given promotion. Thus none has superseded her during this period giving rise to any complaint. In this factual background, 2nd petitioner cannot have any sustainable claim to insist that she should be given promotion with effect from 11-6-1986.

For the aforesaid reasons I do not find anything illegal in Ext. P16 warranting interference under Article 226 of the Constitution of India. The writ petition therefore fails and is dismissed.

ANTONY DOMINIC
JUDGE

jan/-